

**SPECIAL STATE CREDIT UNION BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

July 25, 2012

A special meeting of the State Credit Union Board was called to order by Chairman Entringer in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 3:00 p.m., Wednesday, July 25, 2012.

MEMBERS PRESENT: Robert J. Entringer, Chairman *(Office)*
Paul Brucker, Member *(Office)*
Steve Tonneson, Member *(Office)*
Melanie Stillwell, Member *(Williston)*

MEMBERS ABSENT: None

ALSO PRESENT: Aaron Webb, Secretary *(Office)*
Janilyn Murtha, Assistant Attorney General *(Office)*
Corey Krebs, Chief Examiner – Credit Unions *(Watford City)*
Suzette Richardson, Administrative Staff Officer *(Office)*

**TOWN AND COUNTRY CREDIT UNION, MINOT – REQUEST FOR
ADDITIONAL INVESTMENT IN CUSO**

Chief Examiner Krebs reviewed the June 20, 2012, letter from Town and Country Credit Union requesting approval to recapitalize the Town and Country CUSO, Inc. (T&C CUSO). Chief Examiner Krebs indicated the Department's most recent examination included a Document of Resolution wherein it was requested the credit union recapitalize the T&C CUSO to a positive net worth; therefore, the credit union is requesting approval to invest an additional \$1 million into the T&C CUSO, which is primarily an insurance CUSO. Chief Examiner Krebs indicated \$1 million is not required to recapitalize the T&C CUSO; however, this

amount falls within the legal amount outlined in Section 13-03-23-06, North Dakota Administrative Code.

Chief Examiner Krebs reviewed his Memorandum dated July 10, 2012, which outlines the regulations and facts that apply to the request. Chief Examiner Krebs indicated the request is not to perform any additional services, rather to have funds available to use as needed. Chief Examiner Krebs indicated the T&C CUSO was not profitable in 2011 and lost \$84,000.

Chief Examiner Krebs indicated the impact of this investment should be minimal, and in an extreme case where the credit union lost the entire investment in the CUSO, its net worth would decline to 10.08%

Chief Examiner Krebs indicated he did not make a recommendation regarding approval or disapproval of this request since the credit union does not have a specific purpose for the additional investment; however, Chief Examiner Krebs indicated financially he does not have an issue with the request.

Member Tonneson asked why the T&C CUSO lost \$84,000, and Chief Examiner Krebs the loss is due in part to the cost of purchasing an existing insurance business and expanding into another city.

It was moved by Member Brucker, seconded by Member Tonneson, and carried unanimously carried to approve the request by Town and Country Credit Union, Minot, to invest up to an additional \$1,000,000 for a total investment of \$1,100,000 in the Town and Country CUSO, Inc., and that Chairman Entringer be authorized to sign the Order on behalf of the State Credit Union Board.

PROPOSED ADMINISTRATIVE RULES

Chairman Entringer indicated a record must be established that the Board did consider comments that were submitted regarding the proposed administrative rules.

Assistant Commissioner Webb indicated an open hearing regarding the proposed administrative rules was held at 10:00 a.m., Wednesday, June 20, 2012, and no oral or written comments were received at that time. Assistant Commissioner Webb indicated that Jeff Olson, Credit Union Association of the Dakotas, attended the hearing to observe.

Assistant Commissioner Webb indicated the comment period ended July 2, 2012, with the Department receiving one comment letter dated June 28, 2012, from Marilyn Foss, General Counsel for the North Dakota Bankers Association. Assistant Commissioner Webb indicated the rules changes are proposals that the Board can accept and reject all or any of them.

Assistant Commissioner Webb reviewed the letter from Ms. Foss wherein she stated the notice regarding the proposed administrative rules is too generic as to the reason for proposed changes.

Assistant Attorney General Murtha indicated there are basically two general categories for rule changes: propose changes as a result of a legislative change at either the federal or state level; or propose changes in order to improve the way of doing business.

Assistant Attorney General Murtha indicated she believes Ms. Foss's issue is that many proposed changes are explained as an "administrative update"; however, Assistant Attorney General Murtha stated that is an apt description and the reason is to improve the process.

Assistant Commissioner Webb indicated Ms. Foss questions the power of the Department and State Credit Union Board to expand powers of a state-chartered credit union and that this should be legislative authority. Ms. Foss explains in her letter that the parity provisions and incidental powers under the North Dakota Century Code should not be used to "evade the foundational limit of a credit union charter: that credit unions are only permitted to serve their own members and are not commercial providers of financial services to the general public".

Assistant Commissioner Webb indicated Ms. Foss generally addresses the procedures and standards to be applied in relation to exceptions and exemptions.

Assistant Commissioner Webb reviewed the specific comments Ms. Foss made to the following proposed amendments:

13-03-03-01 – Individual investment limitation – total investment limitation. Ms. Foss comments there is a lack of process and standards as used under the exemption.

Assistant Commissioner Webb indicated the Department concluded that process is addressed under North Dakota Administrative Code 13-01.1 generally.

Assistant Attorney General Murtha indicated there is a process outlined that applies to proceedings before the State Banking Board and State Credit Union Board; therefore, in absence of a specific process that is incorporated into the State Credit Union Board rules would be the process that is generally applicable to both Boards as outlined in North Dakota Administrative Code 13-01.1.

Assistant Commissioner Webb indicated he will refer back to this analysis that procedure is addressed under North Dakota Administrative Code 13-01.1; therefore, the fact that the exemption process is not addressed in each Section is because it is covered under this North Dakota Administrative Code 13-01.1.

Assistant Commissioner Webb indicated Ms. Foss addresses the lack of standards, factors, or objectives, when making a decision; however, standards were proposed to North Dakota Administrative Code Section 13-03-03-01.

Assistant Attorney General Murtha pointed out a change has been made to Section 13-03-03-01.1 – change “the capital ratio of the credit union” to “the net worth ratio of the credit union. Chairman Entringer indicated this change does not require republication as this is not considered a substantive change to the rules.

Member Brucker asked how many non-substantive changes are being proposed, and Chairman Entringer indicated there are six.

Member Tonneson referred to Section 13-03-02-02(3) and asked since “county’s annual tax statement is acceptable for this” is crossed out, does this mean this is no longer acceptable. Chairman Entringer explained the reason this is proposed to be eliminated is because under guidance established by the federal regulatory agencies on what is acceptable for internal appraisals, you can accept a tax statement if you have performed an evaluation of how this was accomplished; however, just looking at the tax statement and determining the appraised value is not acceptable under federal guidelines. Chairman Entringer added it can be used to support the value, but cannot be solely used a basis of the value. Member Tonneson asked what a credit union would have to do in addition to prove it has been diligent, and Chairman Entringer

indicated a credit union can either have someone independent of the transaction that is qualified to appraise the property or can look at what the county does to arrive at the market value. Chief Examiner Krebs indicated if the county's process is validated and gain a comfort level, the county's tax statement can be accepted; or the credit union can go through a process of 15 criteria that its evaluation must meet, which is found in NCUA Letter to Credit Unions, Letter No. 10-CU-23. Member Tonneson asked if during an examination it is determined whether there is documentation indicating a credit union has looked the valuation process. Chief Examiner Krebs indicated there has to be an audit trail, adding that most credit unions use the county tax statement as part of the their analysis.

13-03-08-03 – Credit applications and overdrafts. Ms. Foss indicates there is a perceived notion there are some situations where overdrafts will not be treated as loans. Assistant Commissioner Webb indicated after reviewing the language of the rule draft, it is the Department's opinion that the words within the Section are not ambiguous and that all overdrafts will be treated as loans as provided in this Section.

13-03-16-01(5)(f) – Member business loans. Ms. Foss questions the legal authority to exclude loans by state-chartered credit unions to other state-chartered credit unions and CUSOs from the member business loan definition; also, Ms. Foss explains that federal law 12 C.F.R. 723.1(c) provides that this exemption is only allowed if the state supervisory authority determines that the state law grants authority to lend to these entities other than the general authority grant loans to members.

Assistant Commissioner Webb indicated Section 6-06-06(2) of the North Dakota Century Code grants a general authority to make loans to members, adding that under federal law the Board would not be able to grant that exclusion because it is only general authority, not a specific granted authority for a credit union to lend to other credit unions or CUSOs. Assistant Commissioner Webb indicated based on this, the Department recommends 13-03-16-01(5)(f) be removed.

Member Tonneson asked if there were many situations where this was happening and Chief Examiner Krebs indicated the Department has seen borrowing between a parent credit union and CUSO. Member Stillwell asked if a credit union is still allowed to lend to a CUSO under the CUSO rules. Chief Examiner Krebs indicated he understands whether or not this is

considered a business loan he believes the implication would be for calculation of the member business loan limit; therefore, that loan to the CUSO would have to be called a business loan. Member Stillwell indicated that under the NCUA CUSO rules a credit union could lend or invest in a CUSO, and the state rules has the same provision of lending or investing in a CUSO. Member Stillwell indicated she does not believe the lending authority to a CUSO should be eliminated since it is a part of the federal and state rules. Chairman Entringer stated this is an exemption and would not have to be included as a member business loan; therefore, a credit union could loan to a CUSO, but it has to be considered a member business loan. Chief Examiner Krebs indicated that Chapter 6-06 allows a credit union to lend to members; therefore, as long as the CUSO is an eligible member of the credit union, the credit union can lend to the CUSO, adding that this loan cannot be exempt from the business loan limit portfolio.

Chairman Entringer indicated it has been very limited that a credit union lends to another credit union; adding that this authority should be granted by statute.

13-03-16-02(2)(b) and 13-03-16-02(2)(d). Assistant Commissioner Webb indicated Ms. Foss addresses the lack of process and criteria under both of these sections; however, Assistant Commissioner Webb indicated process is addressed under Chapter 13-01.1 of the North Dakota Administrative Code. Assistant Commissioner Webb indicated “process” is not addressed under the rules because this Section specifically relates to the credit union’s policy and does not need to address the Department’s criteria in reviewing requests for exemption. Assistant Attorney General Murtha agreed since the Section relating to policies of a credit union addresses this, these sections do not need incorporate criteria that the Department would review.

Chairman Entringer added that there are criteria under Section 13-03-16-03(2) that set forth what the Department requests when a credit union is seeking an exception from the lending limits.

Assistant Commissioner Webb indicated the Department determined no additional changes were needed to the proposed rules regarding these Sections.

13-03-16-05 – Construction and development lending. Ms. Foss takes issue with the fact that this language does not directly mirror federal law, 12 C.F.R. 723.3(d). Assistant Commissioner Webb indicated upon review it was

determined the language in the rule is the result of the exact same process federal law provides for, only in a more clear manner. Chief Examiner Krebs explained language the Department added regarding the purpose of this limitation is to avoid confusion which has been encountered numerous times wherein if a credit meets the exclusion outlined in this Section, the understanding is that it is no longer a business credit; therefore, accounting for business loan totals is not done. Chief Examiner Krebs indicated the problem is that this exclusion only relates to loans being included as construction development loans; however, is not excluded from being a business loan. Chief Examiner Krebs indicated the language is trying to make more clear that this exclusion only references construction and development lending, and does not create an exclusion from member business loan treatment; adding this is consistent with federal rules. Chief Examiner Krebs explained since this language is in a clearer manner than federal rules, this should eliminate violations.

13-03-20-01 – Definitions. Ms. Foss takes exception to Subsection 4 which defines a financial organization, wherein the Board proposed to add “any entity or association created under authority of the Farm Credit Act of 1971”. Ms. Foss indicates this change would go beyond what the Legislature expressly authorized. Assistant Commissioner Webb indicated upon review the Department found this is not expressly granted under federal or state law and it would be more appropriate to accomplish this through the legislative process as a change in statute to expand this definition; therefore, the Department recommends the language be eliminated.

Chairman Entringer indicated this is a very rarely occurring situation; therefore, it is the Department’s recommendation to eliminate the language.

Member Tonneson asked since this language is not addressed under federal law, could it be granted under state law and Chairman Entringer indicated it could.

13-03-21-02(1)(a)(4) – Purchase, sale and pledge of eligible obligations. Assistant Commissioner Webb indicates this relates to the language of pooling loans to allowing a sale on an individual basis to the secondary market. Ms. Foss comments this removes provisions connecting these types of loans to the membership of the credit union, which goes beyond statutory authorization. Assistant Commissioner Webb indicated the Department decided to re-insert

the language “and loans sold include a substantial portion of loans to the credit union’s members”.

Member Brucker asked what impact this has, and Assistant Commissioner Webb indicated this ties the loans to the membership, which is what Ms. Foss took issue with.

Chairman Entringer indicated operationally this should not have a material impact since the substantial portion of a credit union’s real estate loans should be to the members; therefore, this allows acquiring and then selling other real estate loans that are made by another credit union on the secondary market.

Member Tonneson asked why this language was initially removed, and Chairman Entringer indicated because the industry standard is no longer to pool packages of loans; loans can be sold one by one. Chief Examiner Krebs indicated the current process is not to pool loans, but by piece meal, so when trying to redo this Section this language was removed by mistake. Chairman Entringer indicated essentially what would be looked at is, of the loans that are made and sold, or possibly bought and sold, whether a majority of those loans were made by a credit union to its own members.

Member Stillwell indicated under the Subsection (1)(a)(4) it refers to purchasing; however, under Subsection (2) it refers to the sale of eligible obligations. Member Stillwell indicated she understood Section (1)(a)(4) to mean that a credit union can purchase these real estate loans.

Chief Examiner Krebs referred to a situation relating to mortgage loans is where a credit union was buying loans that were not made to its own members, which is what this Section is addressing; that a credit union can buy the loan as long as the intention is to also sell them as part of the credit union’s normal ongoing activity of which most is to the credit union’s members.

Chairman Entringer indicated the original language included “and must be sold promptly”, which is now deleted.

13-03-23-03 – Investment in a CUSO – Application. Ms. Foss takes exception to the delegation of the decision making authority to the commissioner regarding the application process, stating that the decision making authority was granted by the Legislature to the Board and not the

commissioner. Ms. Foss also questioned how the process would work in the absence of the commissioner, and takes exception with the default approval as well. Assistant Commissioner Webb indicated after review, the Department recommends going back to the original language in the draft proposal with the idea that if time is of the essence that a special Board meeting would be called, and also took into account the fact that it may be more appropriate for this to be changed through the legislative process.

Chairman Entringer stated he felt there were no comments from the industry supporting the changes; therefore, the easiest way is to leave the Section the way it is, and if it is a time sensitive situation a special meeting will be held.

Chairman Entringer referred to the beginning of the Section where it states “An application to make an initial investment, or increase the amount of an investment in a CUSO must be submitted to the board in writing and must contain the following”; Chairman Entringer indicated “board” was replaced by “commissioner”; however, it was decided to leave “board” instead of “commissioner”.

Member Stillwell indicated it would make sense to make the change to “commissioner”, since in the following paragraph it refers to “once an application is determined to be complete by the commissioner, it must be submitted to the board for consideration”.

Member Brucker indicated credit unions are assuming their input has been made through the collaborative effort of the association and attorney working to get to this point in the proposed amendments.

Chairman Entringer pointed out these are only proposed changes, and that is the Board’s decision as to whether to accept or reject, or accept or reject some of the proposed changes. Chairman Entringer indicated there were no comments received from the industry.

Member Stillwell indicated she feels a credit union spends a considerable amount of time deciding whether to establish a CUSO because of the investments required and added she feels the limit of 20 days is short; however, since the State Credit Union Board meets quarterly and is willing to schedule special meetings, she does not feel this should not be difficult for credit unions to work with.

Members Brucker and Stillwell commented how this was a lengthy discussion when this rule was first established, and also agreed if expanding the limit of 20 days would solve the issue pointed out by Ms. Foss, they would agree.

Assistant Commissioner Webb pointed out that Ms. Foss has two issues with this Section: (1) whether there is legal authority for delegation to the commissioner, and (2) the time limit.

Member Brucker asked if the Board has the authority to delegate this action to the commissioner. Assistant Attorney General Murtha indicated this would need to be researched further; however, believes the comfort level is that a CUSO application be acted on by the Board.

Member Stillwell asked if there is the option for the Board to act on issues electronically. Chairman Entringer explained that electronic action by the Board does not allow the public an opportunity to participate in a meeting, so the answer is no.

Chairman Entringer added that if the Board agrees with the proposed change granting the commissioner authority to act, Assistant Attorney General Murtha would have to research this to make sure there is authority for the Board to delegate this decision-making to the commissioner.

Assistant Commissioner Webb added that the Legislature wants the public to have every opportunity to participate in decisions.

There was discussion regarding time frames of applications; the fact that the Department provides the Department Bulletin monthly which lists pending applications; as well as that the State Banking and State Credit Union Board agendas are available on the Department's website and published with the Secretary of State's Office.

It was the consensus of the Board that the Section should revert to the previous language.

13-03-23-05 – Permissible services and activities. Assistant Commissioner Webb explained all the permissible activities were reorganized and modeled them after the federal law. Assistant Commissioner Webb indicated the main objection by Ms. Foss is the addition of appraisal services. Assistant Commissioner Webb indicated federal law was reviewed and found it does

not expressly authorize appraisal services; therefore, there is merit with the objection made by Ms. Foss. Assistant Commissioner Webb indicated it was decided to recommend removal of “appraisal services”.

Chief Examiner Krebs added that the federal law does not specifically list appraisal services; however, has a wild card provision which provides that the NCUA Board can approve other services as it deems fit. Chief Examiner Krebs indicated through his research with NCUA and NASCUS they have not authorized any credit union to investment in a CUSO that does appraisal services. Chief Examiner Krebs added there is no specific prohibition within federal statutes indicating the NCUA Board could not authorize appraisal services, to date it has never been done.

Chairman Entringer indicated that NCUA did address this issue in 1998, and decided “regarding the impairment of appraiser independence and a possible conflict of interest, the Board declined to add real estate appraisal activities in the list of permissible activities”. Therefore, since it is not a permissible activity in the federal level, Chairman Entringer indicated it was recommended that it should not be added on the state level.

There was discussion on the examination process regarding appraisal activities by a CUSO.

Assistant Attorney General Murtha indicated during the discussion on the rules an issue was “what is the basis for the authorization for the rules”, and that the intent of the rules is to provide clarification for the legislation that applies to it. Assistant Attorney General Murtha indicated in regards to this rule it is a parity issue in that we want to be consistent with the federal law. Assistant Attorney General Murtha stated the federal law has a list of preauthorized activities and appraisal services was not on that list; therefore, if the basis for rulemaking is a parity provision, by adding something not on the federal list, it becomes less clear whether or not clarification is actually being provided.

Chairman Entringer reiterated the options available to the Board are to: approve the rules as amended pursuant to this meeting; approve some or none of the Department’s proposed changes; or modify the Department’s proposed changes.

Chairman Entringer indicated the next step in the process is whatever the Board approves in regard to the rules, Assistant Commissioner Webb would

complete the record and send it to the Attorney General's Office for review; the Attorney General's Office would issue a letter, and that letter as well as the complete record would be submitted to the Legislative Council, and then be scheduled for the next Administrative Rules Committee hearing.

It was moved by Member Brucker and seconded by Member Tonneson to approve the rules as amended and presented to the State Credit Union Board at this meeting.

Member Stillwell asked if the appraisal services will be removed from Section 13-03-23-05, and Chairman Entringer indicated that is correct.

The above motion was unanimously carried.

The meeting adjourned at 4:11 p.m.

Robert J. Entringer, Chairman

Aaron K. Webb, Secretary